

**CITY OF MORGAN HILL  
JOINT SPECIAL CITY COUNCIL  
AND SPECIAL REDEVELOPMENT AGENCY MEETING  
MINUTES – DECEMBER 14, 2005**

**CALL TO ORDER**

Mayor/Chairman Kennedy called the special meeting to order at 6:00 p.m.

**ROLL CALL ATTENDANCE**

Present: Council/Agency Members Carr, Grzan, Sellers, and Mayor/Chairman Kennedy  
Late: Council/Agency Member Tate (arrived at 6:04 p.m.)

**DECLARATION OF POSTING OF AGENDA**

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

***City Council and Redevelopment Agency Action***

**CLOSED SESSIONS:**

Interim City Attorney/Agency Counsel Siegel announced the below listed closed session items, indicating that closed sessions relate to anticipated litigation and personnel/appointment.

**1.**

**CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**

Authority: Government Code Sections 54956.9(b) & (c)  
Number of Potential Cases: 4

**OPPORTUNITY FOR PUBLIC COMMENT**

Mayor/Chairman Kennedy opened the Closed Session items to public comment. No comments were offered.

**ADJOURN TO CLOSED SESSION**

Mayor/Chairman Kennedy adjourned the meeting to Closed Session at 6:03 p.m.

Council/Agency Member Tate joined the Council/Agency Board in closed session.

**RECONVENE**

Mayor/Chairman Kennedy reconvened the meeting at 7:02 p.m.

**CLOSED SESSION ANNOUNCEMENT**

Interim City Attorney/Agency Counsel Siegel announced that no reportable action was taken in closed session regarding personnel: City Attorney. He indicated that this closed session item has been

completed. However, the remaining items listed under anticipated litigation have not been completed and that the Council would be returning to closed session at the conclusion of the open session regarding anticipated litigation.

### **SILENT INVOCATION**

### **PLEDGE OF ALLEGIANCE**

### **CITY COUNCIL SUBCOMMITTEE REPORT**

None

### **CITY MANAGER REPORT**

City Manager Tewes presented an update on the Community Conversation process launched by the City Council. He reported that the City has held successful rehearsals. He stated that part of the outline of the program adopted by the Council included asking volunteers to help the City refine the materials and the processes so that when the City initiates the community conversation in January, the City will have a sense that materials are clear/useful and that the process is one that can be affectively managed within a defined timeframe. He informed the Council that this process has worked well and that the City will now move forward in training a series of facilitators so that as many conversations as possible can be held. He thanked Mayor Pro Tempore Grzan for his column in one of the local newspapers publicizing the community conversation. He stated that it is the City's goal to have as many individuals participate in this unique and deliberative process as citizens will be asked to participate in 2-2½ hour sessions to engage in conversations with their neighbors and fellow citizens about what is important in Morgan Hill and how the community can develop options. Based on the rehearsals, staff believes the community conversations will go well. He indicated that every household in the city received mailed notice about the community conversation as part of City Connections. He stated that the newsletter invites individuals to let the City know if they are interested in participating in the community conversation.

### **CITY ATTORNEY REPORT**

Interim City Attorney/Agency Counsel Siegel stated that he did not have a report to present this evening.

### **OTHER REPORTS**

### **PUBLIC COMMENT**

Mayor/Chairman Kennedy opened the floor to public comments for items not appearing on this evening's agenda.

Steven Serchia informed the Council that the Morgan Hill Bowling Center will be reopening soon. He indicated that he has been talking to the Morgan Hill Police Department as well as the Santa Clara County Sheriffs department as he would like to keep the bowling center safe and a fun environment by having uniformed off duty officers on site in the evenings. To be offered is a family membership

program so that families can utilize the facility. He informed the Council that the grand opening is scheduled for February 1, 2006.

Mayor Kennedy complimented and thanked Mr. Serchia for reopening the bowling alley.

No further comments were offered.

## ***City Council Action***

### **CONSENT CALENDAR:**

Mayor Pro Tempore Grzan requested that item 1 and Mayor Kennedy requested that item 5 be removed from the Consent Calendar.

**Action:** *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (5-0) **Approved** Consent Calendar Items 2-4 and 6 as follows:*

2. **INDOOR RECREATION CENTER PROJECT – NOVEMBER CONSTRUCTION PROGRESS REPORT**  
**Action:** ***Information** only.*
3. **BUDGET AMENDMENT TO AUTHORIZE THE EXPENDITURE OF \$32,000 IN GRANT FUNDS FROM THE SANTA CLARA VALLEY WATER DISTRICT**  
**Action:** ***Amended** the Fiscal Year 2005-2006 Budget to Authorize the Expenditure of \$32,000 in Grant Funds Received from the Santa Clara Valley Water District for Storm Water Quality Outreach Efforts.*
4. **RESOLUTION AMENDING CITY'S CONFLICT OF INTEREST CODE REPORTING CATEGORIES**  
**Action:** ***Adopted** Resolution No. 5965, amending the list of positions subject to the City's Conflict of Interest Code.*
6. **AB1600 DEVELOPMENT IMPACT FEE REPORT FOR FISCAL YEAR 2004-2005**  
**Action:** ***Accepted** and **Filed** the AB1600 Development Impact Fee Report for the 2004-2005 Fiscal Year.*
1. **NOVEMBER 2005 FINANCE & INVESTMENT REPORT - CITY**

Mayor Pro Tempore Grzan inquired as to the projected deficit for the year based on the figures included in the staff report and with the addition of the aquatics center item to be considered by the City Council later this evening.

Finance Director Dilles said that the City is looking at approximately a \$1.3 million deficit at this time.

City Manager Tewes indicated that some revenues have done better while others have not. He said that

expenditures are less than budgeted. He stated that staff will be presenting the Council with an overall perspective in January 2006.

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (5-0) **Accepted** and **Filed** Report.*

**5.        ACCEPTANCE OF SCOREBOARD DONATION FOR THE AQUATICS CENTER FROM THE RICK FAMILY**

Mayor Kennedy indicated that he pulled this item from the Consent Calendar in order to recognize the Rick family for their donation. He noted the staff report indicates that the scoreboard is valued at \$6,960. He stated that he attended a swim meet held this weekend as well as prior swim meets; noting that the City has been doing well in attracting swim meets. He felt that a scoreboard such as this one will help continue the attraction. He thanked the Rick family for their donation.

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (5-0) **Accepted** the Donation of a Ten Lane Colorado Scoreboard by the Rick Family to the Aquatics Center.*

***City Council and Redevelopment Agency Action***

**CONSENT CALENDAR:**

**Action:**        *On a motion by Council/Agency Member Tate and seconded by Council/Agency Member Carr, the City Council/Agency Board unanimously (5-0) **Approved** Consent Calendar Items 7 and 8 as follows:*

**7.        SPECIAL CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES FOR NOVEMBER 30, 2005**

**Action:** **Approved** as Submitted.

**8.        SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES FOR DECEMBER 7, 2005**

**Action:** **Approved** as Submitted.

***Redevelopment Agency Action***

**CONSENT CALENDAR:**

**Action:**        *On a motion by Agency Member Tate and seconded by Agency Member Carr, the Agency Board unanimously (5-0) **Approved** Consent Calendar Items 9-11 as follows:*

**9.        NOVEMBER 2005 FINANCE & INVESTMENT REPORT - RDA**

**Action:** **Accepted** and **Filed** Report.

**10. ROYAL COURT FOR-SALE HOUSING – MODIFY LOAN TERMS TO PROVIDE GREATER AFFORDABILITY**

**Action:** **Authorized** the Executive Director to Modify as Appropriate, and Execute, Subject to Review and Approval by Agency Counsel, the Loan Documents Allowing \$1 Million of the Existing Redevelopment Agency Loan Amount to be used for 45-Year Resale Restrictions for Nine For-Sale Homes.

**11. LOAN PAYOFF FROM ANRITSU**

**Action:** **Authorized** the Executive Director to do Everything Necessary and Appropriate to Accept \$57,519.31 as the Payoff for the Total Outstanding Principal (\$44,162.75) and Interest (\$13,356.56) for the Loan to Anritsu Company.

## ***City Council Action***

### **PUBLIC HEARINGS:**

**12. DEVELOPMENT AGREEMENT AMENDMENT, DAA-04-03: DEWITT-LATALA – Ordinance No. 1749, New Series**

Planning Manager Rowe presented the staff report on a request to amend the development schedule for a 4-lot residential development to be located on DeWitt Avenue from June 30, 2005 to March 31, 2006. He indicated that the Planning Commission recommends Council approval of the amendment to the development agreement, extending the time limits for obtaining building permits.

Mayor Kennedy indicated that he received a phone call from a resident on John Telfer Drive regarding a problem with the bright light reflection from the new street lights. He inquired whether something can be done to reflect the lights downward.

City Manager Tewes informed the Council that staff met with the resident and was able to assure the resident that the City would provide the appropriate reflectors and shields to address concerns. He indicated that once the trees and shrubs mature, they will provide additional screening.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

**Action:** On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (5-0) **Waived** the reading in full of Ordinance No. 1749, New Series.

**Action:** On a motion by Council Member Tate and seconded by Council Member Carr, the City Council **Introduced** Ordinance No. 1749, New Series, by title only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1699, NEW SERIES, AMENDING THE DEVELOPMENT AGREEMENT FOR APPLICATION DA-04-03: DEWITT-LATALA. (APN 773-08-012), by the following roll call vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.**

**13. ZONING AMENDMENT, ZA-05-12: MONTEREY-CITY OF MORGAN HILL/MORGAN HILL HOUSE – Ordinance No. 1750, New Series**

Council Member Sellers indicated that he would be recusing himself from this item as he resides adjacent to this project. He excused himself from the Council Chambers.

Planning Manager Rowe presented the staff report on a request to amend the zoning on approximately 2.37 acres, the site of the Morgan Hill House and the location of the recently relocated Morgan Hill Museum from open space to public facilities in order to bring the property into compliance with the general plan. At the November 29, 2005 meeting, the Planning Commission voted to recommend Council adoption of the ordinance to bring the zoning into compliance with the general plan.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

**Action:** *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council, on a 4-0 vote with Council Member Sellers absent, **Waived** the reading in full of Ordinance No. 1750, New Series.*

**Action:** *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council **Introduced** Ordinance No. 1750, New Series by title only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING THE ZONING DESIGNATION FROM O-S, OPEN SPACE TO P-F, PUBLIC FACILITIES ON 2.37 ACRES LOCATED AT 17860 MONTEREY ROAD (APN 726-24-020), by the following roll call vote: AYES: Carr, Grzan, Kennedy, Tate; NOES: None; ABSTAIN: None; ABSENT: Sellers.***

Council Member Sellers resumed his seat on the Dais.

## ***City Council Action***

### **OTHER BUSINESS:**

**14. OPTIONS FOR PLACING INITIATIVE ON BALLOT TO REMOVE SUPERMARKET RESTRICTION AT COCHRANE PLAZA**

Interim City Attorney Siegel said that as part of the direction in the approval of the Browman-DiNapoli project, the Council directed staff to return with options concerning removal of the supermarket restriction on Cochrane Plaza. He indicated that an initiative, passed by the voters of Morgan Hill, placed a restriction on the use of supermarkets at Cochrane Plaza. He stated that the only way to remove this restriction is by another vote of the people. There are two options to placing the measure on the ballot: 1) signatures to be gathered with the item to be presented to the Council and the County Board of Supervisors/Registrar of Voters to place the measure on the ballot; or 2) the Council, on its own accord, can place the measure on the ballot. He indicated that there are three possible elections coming up: 1) a special election in March 2006 with the cost being approximately \$250,000 plus environmental review

costs; 2) June 6, 2006, a primary election; and 3) November 7, 2006, a gubernatorial/City Council election. He informed the Council that staff was provided with estimates by the County for election costs and that it appears that it would cost approximately \$50,000 to place a measure on the ballot. It appears that there may be a slight savings if there is more than one initiative on the ballot of approximately 10% for a second ballot measure. Should the City place a measure on the ballot, it will be a city project and would require CEQA review. Staff will not know the level of review until staff knows what will be placed on the ballot. He said that it is staff's belief that CEQA review will be in the form of a negative declaration or mitigated negative declaration. It is possible that an EIR would be required. Staff expects a cost of approximately \$7,500 - \$20,000 to pay for the cost of an environmental review. If a measure is placed on the ballot by signatures, there is no requirement for CEQA review, a cost savings.

Interim City Attorney Siegel informed the Council that CEQA review needs to be completed by March 10 for a June 2006 ballot measure and August 11 for a November 2006 ballot measure. Also, the final language needs to be decided upon. He requested Council direction on whether staff should proceed to prepare language for the ballot and whether the language should solely be for removing the restriction on the shopping center. If it is the Council's decision to go with a June 2006 ballot, staff will proceed with CEQA review in order to have the review completed on time.

Mayor Kennedy opened the floor to public comment.

Kirsten Powell, speaking on behalf of the Morris family, owners of the Cochrane Plaza Shopping Center, requested the Council do what it can to save Cochrane Plaza, in light of the approval of the shopping center on the other side of Highway 101. She said that it has been explained that the DiNapoli-Browman project will have a detrimental impact on the Cochrane Plaza Shopping Center. She noted that the City's report confirms this fact. It is her belief that should the restriction be removed, it would give Cochrane Plaza one more chance to survive and be competitive in this market. She and the Morris family do not believe the grocery store restriction has merit and that the market place should dictate who the tenants should be. She felt it critical that a measure be placed on the June 2006 ballot rather than the November 2006 ballot as Target is planning to vacate the site in March 2007. This means that leasing needs to occur immediately. She felt that waiting until a November 2006 ballot measure would be too late.

No further comments were offered.

Mayor Pro Tempore Grzan inquired whether the owners of Cochrane Plaza would negotiate in good faith from this point forward in order to avoid costs. He inquired whether the Cochrane Plaza owners would engage in leasing the building and not wait until June or November 2006 to act in this regard.

Ms. Powell stated that difficulty lies with Target owning the property at Cochrane Plaza; not the Morris family. She informed the Council that Target is marketing the property with no guarantees that grocery stores would be allowed. She felt Target would have difficulties marketing the property, from a disclosure perspective, to a grocery store use until such time an initiative is approved.

Council Member Sellers stated his support of moving forward with a June 2006 ballot measure. He felt the City has an obligation to do so. It was his recollection that it was the City's action that placed the grocery store restriction on the shopping center. Whatever reason for the restriction, he did not believe it made sense today. He said that the applicant could move forward on their own or by hiring petition gatherers that would cost the owners approximately \$4,000 to gather signatures. He felt it appropriate for the Council to place a June 2006 measure on the ballot that would give consideration to removing the grocery store restriction at the Cochrane Plaza shopping center. The Council could place the measure on the June 2006 ballot and remain neutral on the position; allowing the voters to decide the outcome. However, he felt it appropriate for the Council to express its opinion that it is supportive of the highest and best use of the land. He did not believe there would be a significant impact with the departure of the Target Store as there is an opportunity for the Cochrane Plaza shopping center to become stronger and vibrant than it is today. He felt the Council needs to do its part to make sure this happens. He addressed the fees identified for placing the measure on the ballot. He felt the City was at the mercy of the Registrar of Voters in what they tell staff are the costs. In working with other Registrars of Voters offices in other counties of similar sized cities, costs are significantly lower. He noted that the cost is not insignificant for a June 2006 ballot and that the City is anticipating another measure that will be placed on the ballot. He would like to see the costs for both measures go down in June.

Interim City Attorney Siegel said that staff will need to look into election costs. He was not aware of any flexibility in election costs, but that he may be able to get information to the Council on comparative numbers. Staff can make sure that the numbers provided are accurate.

City Manager Tewes said that one of the reasons cities are seeing higher election costs in recent years is attributed to the fact that the Santa Clara County made a decision to amortize the costs of new electronic machines over a shorter period of time than other counties. Therefore, elections over the next 2-3 years are likely to be more expensive than they have been in the past versus what they will be five years from now.

**Action:** *Council Member Sellers made a motion to **Direct** that a measure be placed on the June 2006 ballot; stating that the Council believes it is a good idea to remove the supermarket restriction from the Cochrane Plaza shopping center.*

Interim City Attorney Siegel clarified that at this point, staff is looking for direction from Council. Staff will return to the Council with a ballot measure along with direction on what the Council can or cannot do with ballot measures once they are placed on the ballot.

**Action:** *Council Member Sellers made a motion, seconded by Council Member Carr, to: 1) **Direct** the City Attorney and Planning Division staff members to begin the process to place an initiative measure on the June 2006 ballot that would remove the supermarket restriction from the Cochrane Plaza Shopping Center; and 2) **Expressed** support in getting the shopping center up and running.*

Mayor Kennedy felt that it was important to place the measure on the ballot as early as possible; the June 2006 election. He stated that economic development is important to the City; especially commercial-retail businesses as they relate to the City's budget. There is also a need for Morgan Hill



residents to shop locally. He felt that a ballot measure that gives consideration to the removal of the grocery store restriction would be an investment in economic development, and would provide the ability for Target to start the process of backfilling the space that will become empty.

Council Member Tate noted that the City's general plan encourages grocery store opportunities in this area. He did not recall why the restriction was placed on the shopping center initially. He stated his support of a June 2006 ballot measure so that it does not confuse the voters with other items and measures to be placed on the November 2006 ballot.

**Vote:**            *The motion carried unanimously (5-0)*

## **15.    CIVIC CENTER PLAZA BENCHES**

Special Assistant to the City Manager Spier presented the staff report, informing the Council that she appeared before the Council on November 30, 2005 to advise the Council that staff was at 100% construction documents on the library project with completion scheduled for December 21, 2005. She indicated that benches were items that had not been completed as far as what the Library, Culture & Arts Commission and the Sister Cities perceived as being the civic center bench decision. She noted that the benches are part of the project budget and have always been a part of the project as outdoor seating was desired for the civic center plaza. At the November 30 meeting, the Council sent her back to work with the Library, Culture & Arts Commission and the Sister Cities Committee. She informed the Council that these two groups met on December 12 with two members from the Sister Cities Committee making a presentation to the Library, Culture & Arts Commission; outlining their understanding of the civic center project and how they would like to see the City's sister cities be incorporated. She noted that there are two sets of seating areas: six benches sited along the entrance of the library, and six benches/seat walls that are a part of the civic center plaza. She provided the Commission with a preliminary design of the benches. The Commission is recommending a stack of books as an architectural element. She indicated that she received communication from the Friends of the Library stating their support of the design as specified by the Library, Culture, and Arts Commission. The Commission further stands behind their November 30 recommendation to the Council. She informed the Council that the Commission is committed to assisting the Sister Cities Committee with sister cities display cases at the Community & Culture Center in a future report to the City Council. It is understood that there is no funding for the display cases. She clarified that the six benches that are located in the civic center plaza have a learning language wall, depicting sayings in six languages.

Council Member Tate indicated that the Library, Culture & Arts Commission took a Library Commission stand on the benches by stating that it was their belief that items to be placed at the library should be associated with the library. Yet, they took a Cultural Commission stand on the Sister Cities Committee's request to have a cultural reflection within the community of the City's sister cities and their presence. He said that the Commission agreed to work with the Sister Cities Committee to have sister city items displayed at the Community & Culture Center. However, the Council is not being asked to act on this recommendation this evening. He wanted to assure the Council that the Commission is looking at the cultural aspects of the City's sister cities as well, and will be proposing a recommendation in the future.

Mayor Kennedy stated that as the City Council's representative to the Sister Cities Committee, he would address the concept of sister city benches for the Committee. He said that this is a civic center plaza; not just a library plaza. When the Council first discussed moving the library to the civic center site, he said that the concept of a plaza came up with the idea of having a place to give the City's sister cities recognition. He felt the civic center plaza would be an ideal location to give recognition to the City's sister cities. One thought was to have flags displayed from each country. He indicated that the library architect originally came up with the idea that the back of the benches would have information regarding each sister city. It is his understanding that the Library, Culture & Arts Commission did not like this concept and that they wanted all information on the site to be related to the library. As the flag poles are not incorporated into the budget, as it is costly; he felt that recognition of the City's sister cities could be incorporated into the benches. He recommended that each bench incorporate a display or indication of the City's sister cities. When the City has sister city delegates visiting Morgan Hill, they can see that the City incorporated information about them in the civic center. He encouraged the Council to keep the civic center plaza and not just focus on the library. He noted that the library has separate benches and its own opportunities for display. As much as he strongly supports the library and moving its location on this site, it is his belief that the civic center plaza is a good location for the benches that incorporates sister city information.

Council Member Carr stated that he did not understand where the Sister Cities Committee stands on this issue. He noted that the Council received a report that the Sister Cities Committee attended a Library, Culture & Arts Commission at which time there was a discussion about this item. He noted that the Commission is returning to the Council supporting its previous position. However, the staff report does not indicate the Sister Cities Committee's position. He inquired whether Mayor Kennedy's position was reflective of the Sister Cities Committee's recommendation.

Council Member Tate informed the Council that two members from the Sister Cities Committee were in attendance at the Library, Culture & Arts Commission Monday night and made a presentation. The Committee requested that the benches reflect information about the City's sister cities. He noted that two members of the Sister Cities Committee also sit as Library, Culture & Arts Commissioners who voted not to support the Sister Cities Committee request.

Council Member Carr felt that more work needs to be done on this item. It was his recollection that when the Council made the decision to retain the library in this center, one of the arguments made was that the City was going to develop a civic center plaza; not a library plaza. It was felt that the civic center plaza would be an appropriate place to display information about the City's sister cities. He was not sure whether the Council needs to make a decision between one or the other. It was felt that the benches would be made of precast concrete book benches and that there is a cost associated with the benches. It was his belief that within the design of the book benches, the City could incorporate information about the sister cities. He inquired whether the architects could be asked whether the book benches could incorporate a title that is reflective of the City's sister cities. The book title could be written in the language of the City's sister cities or list a famous author from the region/country of the sister city. He noted that during the library discussions, people talked about the idea of education and lifelong learning. He could not think of anything that is more important for the community's youth to learn about diversity and tolerance; the hallmark of sister city relationships. It was his belief that there

may be ways to incorporate both the library design and the relationship of sister cities to achieve what the Commission and the Committee are trying to accomplish.

Mayor Kennedy noted that there are six benches designed close to the library. There are six other benches that were originally proposed to be used as sister city benches; containing information on the sister cities. Therefore, there are a total of 12 benches. He did not understand why both concepts cannot be incorporated. It was his belief that the library book benches were reflective of the library. However, he did not believe there was a need for all 12 benches to focus on the library.

Council Member Grzan inquired what would happen should the City develop future relationships with other cities.

Mayor Kennedy noted that the City currently has two sister city relationships, and is in the process of adding a third sister city relationship, with the possibility of establishing a fourth sister city relationship with Japan. He indicated that there is room for expansion to add two sister cities beyond the four potential sister cities should this be the decision of the City Council. As an alternative, the City could incorporate additional benches.

Council Member Tate said that at the Council's November 30 meeting, the Council directed staff to take the request for sister city benches to the Library, Culture & Arts Commission at the request of George Nale; requesting that the Commission meet with the Sister Cities Committee. The Commission was to return with a recommendation. He noted that the Commission has returned to the Council with the same recommendation following their discussion with the Sister Cities Committee. However, the Commission recognized the need for acknowledgement of the City's sister cities within the community and recommended that this be done at the Community & Culture Center. He indicated that the Commission's decision is endorsed by the Friends of the Library who are conducting fundraising efforts for a lot of the library needs. He recommended that the Council accept the Commission's recommendation. He again noted that there are two members of the Sister Cities Committee who sit on the Library, Culture & Arts Commission who supported the Commission's position.

Mayor Kennedy noted that the Library, Culture & Arts Commission was primarily a library commission and that it was only recently that the Council added a new member who would evaluate culture and arts. He stated that he was not surprised that the Commission would take a position in strong support of the library. However, he felt the Council needs to look at the broader goals of the City, as a whole. He noted that even when the library proposal was sent to the state competition, the project identified sister city flag poles within the plaza. He stated that while he respects the position of the Commission, he felt the Council needs to look at the broader goals of the City. With 12 benches, the City has an opportunity to address both the library needs and give recognition to the City's sister city relationships. It was his belief that Commissioner Dillmann has advocated having a display at the Community & Culture Center. He stated that although the Community & Culture Center is a completed facility, space is not as readily available, and that the cost would be great as you would have to retrofit the facility.

Council Member Tate said that there was a lot of discussion at the Library, Culture & Arts Commission meeting and that there was a feeling that you could inexpensively use some wall space and bring in display cases at the Community & Culture Center. He noted that there is no financing for flagpoles

associated with the library project. However, there is a strong feeling by the Commission that they could be appropriately situated in front of the Community & Culture Center.

Mayor Kennedy inquired as to the proposal for incorporating sister cities recognition at the Community & Cultural Center, including the costs.

Ms. Spier stated that she did not know what it would cost to incorporate sister cities recognition at the Community & Culture Center. She indicated that Commissioner Dillmann has talked about the possibility of installing a display case in the space adjacent to the El Toro Room. There was discussion about security issues and the fact that it would have to be a lockable display case with the Sister Cities Committee funding the display case. Also, discussed were plaques at the fountain as a possibility and/or future benches around the amphitheater area. It was her belief that Library, Culture & Arts Commissioner Cook addressed the issue of possibly having a wall dedicated to sister cities art work; a changeable art display. She stated that the Commission tried to come up with ways to assist the Sister Cities Committee. She indicated that \$15,000 has been spent on three small art display cases to give the Council an idea as to the costs associated with display cases.

Mayor Kennedy stated that the City has been accumulating a number of memorabilia items from various sister cities; some of the items being displayed in his office. He did not believe these items belong in his office, but belong in a public place. He felt that a display case was a good idea. There are also art pieces being stored in the Villas Conference Room and are not being well taken care of as there is no place to display them. Therefore, it was his belief that display cases are important and should be purchased in any event. He stated that he would be willing to assist with the purchase of display cases. However, this does not answer the question at hand. It was his belief the City needs to provide a public place for sister cities representation.

Mayor Pro Tempore Grzan stated that he was inclined to go along with the recommendation of the Library, Culture & Arts Commission as it is the recommendation before the Council. He did not see any reason to overrule their recommendation at this time. He indicated that he has advocated to the Council that commissions be allowed to do their job. The Commission has considered the options; receiving a presentation from the Sister Cities Committee. He noted that it was stated that two members from the Sister Cities Committee sit on the Commission who agreed with the Commission. Therefore, he was inclined to support the Commission's recommendation.

**Action:**        *Council Member Tate made a motion, seconded by Council Member Sellers, to **Approve** the recommendation from the Library, Culture and Arts Commission for Design Elements of Civic Center Plaza Benches (staff's recommended action).*

Council Member Carr agreed that there is an argument that this would be a civic center plaza and not just a library center. This would be a place where the community gathers and community activities occur. The plaza would not only be about books and literacy. He felt that this is a little disingenuous by some individuals. He said that he does not have the insight of having attended the Library, Culture & Arts Commission meeting to hear the discussion. However, from reading the staff report, he does not get a sense of interest in working toward a solution. The Commission agreed to stay with its original recommendation and agreed to work with the Sister Cities Committee toward a display case. He felt that

a display case needs to be located at the Community & Culture Center and that the artifacts need to be protected and displayed. He noted that the City has stated for a long time that it would do something with sister cities at this location. He said that if there was an alternative proposal to the benches at the civic center, it would be easy to support the recommendation. However, he does not see a willingness to do so. He felt the motion should include a statement that the Council wants to make this a true civic center; incorporating other aspects of civic life at the civic center. It was his belief that the City is wasting a great opportunity in a facility that is being built.

Mayor Pro Tempore Grzan stated that he was not advocating one position over the other. He stated that he would like to move forward with the recommendation items contained in the staff report. He said that he understands the value of what Council Member Carr was stating. He inquired whether the Council wants to go back to the Commission one more time. If so, would it delay the construction of the library by going back to the Commission for further consideration?

Ms. Spier informed the Council that the City is under a timeline and that staff has to complete the construction documents by December 21, 2005. Therefore, there is not enough time to take this item back to the Commission for further consideration. She stated that it was her belief that wording would be inscribed into the cement pad. She said that it has been suggested that at least three benches could be reflective of the City's three sister cities.

Mayor Kennedy felt the City could proceed with the concept; leaving the language out. He recommended the City take additional time to receive feedback. He did not believe it would be difficult to change the inscription at some point.

Ms. Spier clarified that what is being proposed is formed lettering or characters inscribed onto concrete. Therefore, the Council will need to decide on the wording to be included in the construction documents. As long as the seat walls and their location are identified, staff can continue to move forward.

City Manager Tewes informed the Council that staff is preparing the bid documents in order to receive sealed bids from contractors who will provide a fixed price for the total project. It was his belief that Mayor Kennedy's point is that the Council move forward with the proposal as currently designed and that subsequent to the award of the contract, through a change order process, the City could change the project at some additional cost. In order to meet the schedule outlined by the Council, staff needs to go out to bid with 100% construction drawings.

Council Member Tate inquired whether the motion could include flexibility as suggested by Mayor Kennedy such that the words are not identified at this time; inscribing after it has been determined what is to be inscribed.

Mayor Kennedy recommended that a note be included that stipulates that language is to be provided. The contractor can bid knowing that the language would be provided at a later date and would not delay the project. It can be a generic statement versus identifying specific language.

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**Action:** *Council Member Tate made a motion, seconded by Council Member Sellers, to amend the motion to incorporate a generic statement regarding inscription. The amended motion carried unanimously (5-0).*

**16. 2005-2006 HAZARDOUS VEGETATION PROGRAM – Resolution No. 5966**

Assistant to the City Manager Dile presented the staff report, requesting the City Council adopt the schedule for the 2006-Hazardous Vegetation Program.

Mayor Kennedy opened the floor to public comment. No comments were offered.

**Action:** *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (5-0) **Adopted** Resolution No. 5966, Declaring Weeds and Brush to be a Nuisance and Setting January 11, 2006 as the date for the Public Hearing Regarding Weed Abatement; and June 7, 2006 as the date for the Public Hearing Regarding Brush Abatement.*

**17. COMMUNITY SPECIAL EVENT FUNDING REQUESTS**

Special Assistant to the City Manager Spier informed the Council that she is reporting the action the Chamber of Commerce and the Downtown Association have worked toward. She said that there is some consensus about what the rules/policies should be for the closure of Monterey Road with special events based on impacts to downtown merchants. They also have recommendations on how the City can coordinate with them in terms of granting special event permits to the regular annual celebrations as well as new events that are starting to look favorably at downtown Morgan Hill. She identified staff recommended actions. She informed the Council that there have been a variety of times that Monterey Road has been closed on Fridays. Staff would like to see a cohesive standard time when Monterey Road can be closed on Fridays. She noted that there is no funding allocated for any special events this year except for centennial events from the Community Promotions budget.

Mayor Kennedy opened the floor to public comment.

Dan Craig indicated that the Mushroom Mardi Gras and the Specialized Bicycles' events were new events in the downtown last year; both highly successful events. He said that the Downtown Association welcomes the exposure and attention that these events bring. However, there are times when there is a misunderstanding about how much benefit businesses receive with these downtown events; while serving as a hardship for many. He indicated that businesses believe that in the interest of economic development, they would not stand in the way of special events. He said that the addition of two events alerted the Downtown Association and a question by the membership of when Friday closures should occur. It was his belief that the Friday street closure associated with the Mushroom Mardi Gras became contentious because it was a new event in the downtown; along with the other regular events taking place in the downtown. He informed the Council that Mushroom Mardi Gras representatives have stated that a 10 p.m. road closure does not work as they are considering a street dance. He informed the Council that businesses are receptive to an earlier street closure if this event included a street dance as people would patronize restaurants. As it stands now, the Downtown Association recommends a 10:00

p.m. Friday closure. He indicated that the Chamber of Commerce has gone on record as stating that they will go along with the 10 p.m. closure unless there is a street dance proposed as part of the special event. They are willing to support a 6 p.m. street closure if the event includes a street dance. He indicated that Sunday Minnich would like to cooperate with the Downtown Association and the Chamber of Commerce on a street dance, with a 5 p.m. street closure. Should it be that special event promoters want a street closure on Friday nights and are not proposing a street dance, there is an impasse on a 7 p.m. or 10 p.m. street closure. He felt that there needs to be some discussion on how many events per year are appropriate for the downtown business district.

Mayor Kennedy inquired whether staff's recommended action addresses the issues raised or whether there are differences on the issues.

City Manager Tewes clarified that staff is offering two recommendations: 1) the Council to establish a process by which the City receives proposals from groups seeking City financial assistance; and 2) there be established common rules for the closure of downtown. He informed the Council that staff is not recommending the Council establish the common rules for road closure this evening, but to consider the concept of common rules. Staff recommends the Council authorize staff to continue to work with the affected organizations to develop the common rules.

Mr. Craig informed the Council that the Downtown Association has exhausted its efforts on trying to work out the Friday night street closure with the Mushroom Mardi Gras representative. It was his belief that at some point staff will need to make a recommendation for Council consideration. He clarified that the Downtown Association is in agreement with an earlier street closure, if associated with a street dance. Without a street dance, an impasse remains.

Gary Walton said that when the Mushroom Mardi Gras conducted its first downtown event, the Downtown Association conducted an evaluation. The Downtown Association provided Mushroom Mardi Gras representatives with information on where there might be improvements the following year. He felt it important to keep communication open between the downtown merchants and whatever event is to occur in the downtown. He said that certain things are grated by the Downtown Association in terms of whether the special event proponents left the downtown clean, did problems arise, etc. He felt communication was important so that little problems do not become bigger problems.

No further comments were offered.

Council Member Tate indicated that he is a member of a board that may be influenced by these rules. He inquired whether he should be excusing himself from participation in these discussions.

Interim City Attorney Siegel noted that the Council would not be establishing rules, but merely deciding whether it will consider establishing rules. He did not believe Council Member Tate has a conflict on this matter at this time.

Council Member Sellers stated his support of staff's recommended actions as it would give the Council stability when it comes to budgeting for funding requests. He noted that the City is trying to add several hundred housing units in the next 3-5 years. As these units come on board, this would exacerbate the

problem for individuals residing in and near the downtown for the street closure. He felt that the problem with Mushroom Mardi Gras was made more significant by the fact that the event was held on the Friday of the Memorial Day weekend; creating a significant strain on the downtown. He did not support street closures any earlier than 9 p.m. if a street dance is not associated with the special event. This is the time when major businesses start to wind down or have reached enough of a critical mass where individuals would not be coming in and out of the downtown quickly. He felt it important that every effort be made to incrementally close the street(s) to lesson the impacts.

**Action:** *Council Member Sellers made a motion, seconded by Council Member Tate, to **Direct** that all Special Event Funding Requests be Submitted to Council no later than March 31, 2006 for Fiscal Year 2006-2007, and that this will become an Annual Requirement for Funding Requests.*

**Action:** *Council Member Sellers made a motion, seconded by Council Member Tate, to **Direct** that Requests for April 2006 thru June 30, 2006 be Determined on a Case by Case Basis.*

**Action:** *Council Member Sellers made a motion, seconded by Council Member Tate, to **Direct** that all requests be reviewed by Council within 30 Days of the Deadline to enable Council to provide budget direction to staff.*

**Action:** *Council Member Sellers made a motion, seconded by Council Member Tate, to **Require** that all Downtown Events Requesting a Friday Closure of Monterey Street to Follow the Specific Time Approved for all Events: no earlier than 9:00 p.m. on Friday nights without a street dance associated with the special event; with Exemptions Requiring Approval by Council.*

Council Member Tate indicated that Stan Sullivan, president of the Mushroom Mardi Gras, attended the Public Safety and Community Services Committee meeting and made a strong appeal for the 7 p.m. street closure he felt was needed for the Mushroom Mardi Gras event. The Committee understood the need, but wanted to understand what the Taste of Morgan Hill has been doing all these years. Subsequent to the Committee's meeting, it was found that before the Taste of Morgan Hill had a Friday night dance, the streets were closed at 10 p.m. He did not believe that a street closure earlier than 9 p.m. was needed if a street dance was not associated with the event.

Council Member Sellers noted that Mushroom Mardi Gras traditionally does a little more elaborate job in delineating where the booths are to be located along the streets; an issue. He said that it could be possible that delineating with markings where booths are to be located can be done at other times. However, there are safety issues associated with this. He noted that there are other times in the year where set ups do not call for street closures. He indicated that most of the booths are set up late at night or the next morning. He said that it is the committee that gets things ready and delineates the lines on the streets. Vendors show up early in the morning. He clarified that he proposes that set up occur no earlier than 9 p.m.

Council Member Carr recommended that event organizers be asked or be required to state that the downtown businesses/restaurants are open during street closures in the advertising of the events. He



stated that the number of events identified in the staff report is a good number, and that he did not want to add more events to this list. He felt that this was an item to be discussed when this item returns to the Council. He clarified that adoption of rules does not mean the City would be closing the downtown additional weekends throughout the year.

Council Member Sellers said that he concurred with Council Member Carr's assessment on the appropriate number of special events to be held in the downtown. However, he would hate to preclude an event that everyone would like to see take place. Perhaps, an event proponent would need to demonstrate value of the community event.

**Vote:**            *The four motions carried unanimously (5-0).*

City Manager Tewes clarified that with the motion, staff will work with the various organizations to try and develop common rules; noting that the Council has set one of the common rules: No closures before 9 p.m. without a street dance.

**18.    COMMUNITY AND CULTURAL CENTER AND PLAYHOUSE PROPOSED RENTAL RATE INCREASES**

Interim Recreation and Community Services Manager Cooper presented the staff, requesting Council adoption of staff's proposal to raise some rental rates at the Community & Cultural Center and the Community Playhouse. He informed the Council that the basic rates have not been changed since the opening of the facilities. After three years of experience, it gives staff an opportunity to recommend fee increases. Staff has conducted a study to determine how the City compares with other jurisdictions and that staff believes it is time to make changes. He informed the Council that staff is trying to make the fee structure simple; setting basic rates with discounts for citizens of Morgan Hill and non profit organizations in prime time/non prime time rates.

Recreation Manager Lugger requested Council approval of the proposed rental rate increases to be effective January 1, 2006. She identified the 10 items where rates would be changed; indicating that the proposed rates would simplify the process. She informed the Council that the Parks & Recreation Commission reviewed the proposed rates and that they were supportive of the increases.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Council Member Carr indicated that the Public Safety & Community Services Committee reviewed the proposed rental increases earlier this evening and is recommending Council approval.

**Action:**            *On a motion by Council Member Carr and seconded by Council Member Tate, the City Council unanimously (5-0) **Directed** Staff to Implement the Proposed Rental Rate Increases, Effective January 1, 2006, as Outlined in Staff Report.*

**19.    AQUATICS CENTER FALL SEASON ACTIVITY REPORT**

Interim Recreation and Community Services Manager Cooper presented the staff report, indicating that in August 2005, the Council adopted an amended budget for the aquatics center that called for a deficit of \$120,000 at the end of the season. It was found that the aquatics center was not doing well in August and that there was no way of knowing that this was going to be a problem. He informed the Council that staff has new projections as contained in the staff report. At this point, staff believes the deficit will be approximately \$247,000. He stated that this projection may improve or get worse with adverse weather. He introduced aquatics center staff members in attendance: Dick Busse, Theresa Magno, Becky Weaver, and Kim Gowenlock. He indicated that staff has worked hard to keep expenses down and improve revenues.

Mayor Pro Tempore Grzan inquired how it is known that weather was the factor in the lower attendance numbers. He felt it could be possible that citizens patronized the aquatics center and enjoyed it the first year, and that the City may now be seeing a truer annual participation number of residents in the community using the aquatics center.

Mr. Cooper said that he has been told, by a number of individuals, that the attendance numbers were higher last year based on higher temperatures. He said that if low attendance occurs again next year, the numbers may be the actual numbers. He said that it is incumbent upon the City to keep the facility fresh and exciting; while improving services in order to mitigate individuals not wanting to come back.

Mayor Pro Tempore Grzan noted the City made an investment to add a new waterslide in order to enhance revenue. He inquired whether the new waterslide enhanced revenues.

Mr. Cooper stated that the waterslide is an addition to the center and helps revenue. However, he does not know how much it helped revenue compared to the prior year. He said that the new waterslide has been a popular feature; one that is used a great deal.

City Manager Tewes said that Mayor Pro Tempore Grzan's supposition may be a possibility. He stated that attendance generally has correlated with temperatures and that hotter days raise attendance levels. If Mayor Pro Tempore Grzan is correct, he said that it would be helpful if staff is given flexibility to establish pricing and pricing packages that quickly respond to changes as staff is not able to react quick enough to the information gained in a short season (e.g., June through August). He said that staff needs to determine the right number of times citizens of Morgan Hill want to experience and use the aquatics center in the summer.

Council Member Sellers said that in performing an economic analysis, you try to find the variable that changes. He indicated that he spent a lot of time at the aquatics center this August as well as the previous August; noting a discernable difference. He indicated that attendance was the same in June and July, but off in August. He felt it is valid to state that staff needs to continue to gather data.

Mayor Pro Tempore Grzan requested that staff provide the Council with attendance data.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Mayor Pro Tempore Grzan stated that the aquatics center was presented as a facility that would break even. In May of last year, it was found that there would be a deficit and that in June the Council found that the deficit was significantly higher, over \$400,000. In June of this year, the Council received an estimate of the aquatics center deficit of approximately \$120,000 and now it is being readjusted to \$247,000. He stated that the facility was built on the precept that it would be cost effective or that revenue would help offset expenses. The Council is now seeing that cost recovery is not an achievable outcome for this facility. He does not know of any local public recreational center that makes money or breaks even. He felt the aquatics facility is a wonderful facility, but is concerned about the strategies and methods used to promote public facilities on the precept that it would not cost the public money. He expressed concern that the City is building an indoor recreation center on the same precept that it will break even. With the history the City is having with its recreation centers, he does not envision the facility generating enough revenue to offset expenses. He noted the City is currently operating under a deficit budget, and that he sees additional debt coming the City's way with new facilities. He recommended the Council look at the reality that these facilities will probably not break even. The City may face raising its fees so high that it would preclude residents of Morgan Hill from using facilities. He stated the City needs to continue working on economic development and generating enough revenue to offset these costs; underwriting these costs to some degree. He would like to have affordable rates for the community to participate in these programs. He felt the City should have had a good financial infrastructure in place to help sustain these facilities long before building them. He said the City is looking for revenue to help sustain facilities; adding pressure to making decisions on retail stores, etc. He stated that he is looking positively toward the indoor recreation center. However, as recent history suggests, it will probably lose money as well.

Mayor Kennedy agreed the City needs to do all it can to build the City's revenue base in order to support the facilities it builds. He said that it was his recollection that in the financial review prepared by the Sports Management Group, the report stipulated a goal of breaking even after 3 years. The City became overly optimistic based on the initial numbers coming in and assumed that these numbers were going to continue. The reality is that the deficit was higher than what the Sports Management Group indicated. He recommended the City include the items that were part of the original project that would help make the facility become more cost effective such as the installation of solar heating/solar energy. Costs could be built into the facilities that would reduce operating costs. He said the Council looked at short term initial costs by value engineering items out of the project, and that it may have ended up costing the City more, in the long term. He felt it may be appropriate to look at bringing the cost saving features back into the facilities and provide funding to do so as part of the proposed RDA amendment.

Council Member Carr indicated that the Public Safety & Community Services Committee discussed this item earlier this evening. He stated that he did not disagree with the comments expressed by Mayor Pro Tempore Grzan and was pleased that he would be taking a leadership role in speaking with the community about the needs of the City and how to fund these needs. He stated that it is encouraging to see that expenditures have dropped. Although, the City may not find the break even point, he felt there may be room for improvement. He said the City needs to be mindful of the investment it makes on this facility to make sure it is an efficient, first rate facility; one that individuals will continue to use. Although the City is not in a place it wants to be in, he felt the City is hearing better news than the Council received after last year's season.

Council Member Tate confirmed that the Public Safety & Community Services Committee discussed the aquatics center this afternoon. He asked Mr. Cooper whether he believed the aquatics center would ever break even with a response of “no.” He further asked whether once all facilities were built and interactive, would there be a chance to break even at that time. Mr. Cooper presented a realistic, but yet encouraging answer in that he is putting a management team together for the indoor recreation center that will result in having a cooperative and synergistic affect, aquatics-wise, between the indoor pool and the outdoor facility. He agreed the Council should not be overly optimistic as it was with the aquatics center. It is his hope that the City will learn, as it moves forward, so that the facilities have a strong synergy to operate together. Although the City may not be able to make money on all the facilities, the City may be able to hold its head above water. He indicated that the Council never intended to make money on the Community & Culture Center and knew that the City would have to subsidize the facility; noting that this was built into the model. He felt the Community & Cultural Center and Playhouse will play into the whole synergistic affect. He stated that he was cautiously optimistic, but not as optimistic as he was in 1999. He felt the City was heading in the right direction in terms of looking for efficiencies until such time the RDA is amended.

**Action:**        *By consensus, the City Council **Received** the Aquatics Center Report on Fall Season Activities and Current Estimate for Year-End Net Impact to General Fund.*

**20.     CONSIDER PROPOSED TEXT AMENDMENTS TO TITLE 2, ADMINISTRATION AND PERSONNEL, OF THE MORGAN HILL MUNICIPAL CODE**

Council Services & Records Manager Torrez presented the staff report, informing the Council that in October, it reviewed proposed text amendments to the municipal code as it relates to boards and commissions. Following staff presentation and Council discussion, the Council directed staff to present the proposed text amendments to the affected boards and commission. She reported that staff attended board and commission meetings where the proposed text amendments were presented. The board and commission members offered the following comments/recommendations:

**Architectural and Site Review Board (ARB)**

- Supportive of proposed amendments to Section 2.56.020 that allows flexibility in appointment of members
- Recommend that there be a limit to the distance from Morgan Hill a member can reside (ability to attend meetings on a regular basis)

**Senior Advisory Committee**

- Appreciate the willingness to allow this Committee to report directly to the Council
- Supported the provisions of Chapter 2.70 as outlined in the draft ordinance
- Requested that Section 2.70.040, Powers & Duties, be amended to allow this Commission to discuss and make recommendations as they relate to accessibility and nutrition

- The current Committee appointed by the Parks & Recreation Commission. Does the Council wish to consider re interviewing the current Senior Advisory Committee and appoint or allow this Committee to serve as the Commission. As terms expire, the Council would interview/appoint to fill vacancies. (Staff question, not commission driven.)

### **Library, Culture & Arts Commission**

- Commission was in general support of the amendments to Chapter 2.68
- Recommend that Section 2.68.040D, Powers & Duties, be amended to allow the Commission the ability to provide advise and recommend regarding the adequacy of existing library facilities; including operations
- Commission will be working toward defining “arts” and “culture”
- This Commission will also work toward drafting policies, guidelines and scope of work for this expanded Commission for Council consideration

### **Parks & Recreation Commission (PRC)**

- Commission supports Senior Advisory Committee reporting directly to the Council
- No objection to the expansion of the Library Commission to the “Library, Culture & Arts Commission.” However, a PRC member did not believe the Library, Culture & Arts Commission should have the authority of making final decisions on art in public recreational facilities. The PRC members would like the ability to provide input regarding art in public recreational facilities
- Discussed whether the Senior Advisory Committee and Youth Advisory Committee would need to come before the PRC and/or Council regarding changes to the indoor recreation center. It was a commissioner’s belief that commissions should come through the PRC for items that relate to parks and recreational facilities.

### **Residency Requirements**

- It was a PRC member’s belief that individuals who reside within the City’s urban service area be considered for appointment (beyond the City’s sphere of influence)
- Supported priority appointments being given to Morgan Hill residents
- Concern expressed by PRC member regarding cancellation of meetings due to the lack of a quorum.

- Suggested that Council Members be assigned to a board or commission as a liaison; sitting in on meetings. When there is a lack of a quorum, the Council Member would participate and be a voting member at said meeting(s).
- Suggested that other board and commission members be appointed to serve as alternates to boards and commission; serving when it is known that a lack of a quorum exists

### **Other**

- Terms of Office – In general, majority of board and commissions supported 2-year appointment terms. A majority of the Parks & Recreation Commission supported a 4-year appointment term.
- Would the Council consider appointment of non U.S. resident who resides in Morgan Hill to serve?

Council Services & Records Manager Torrez informed the Council that staff recently received a call from a citizen who resides in Morgan Hill and is interested in serving on the Library, Culture & Arts Commission. This individual has a degree in art and is the winner of the Centennial Art Design. Although the individual is a resident of Morgan Hill, she is not a U.S. citizen. She informed the Council that the City's Municipal Code states that individuals appointed to the various boards and commissions must be a registered voter in the County of Santa Clara.

Interim City Attorney Siegel indicated that he would need to conduct research to determine whether there are restrictions in appointing non U.S. citizens to boards or commissions. Regarding the idea of Council Members serving on commissions as a voting member, he stated that this concept would prevent Council members from voting on an issue should a matter come before the Council for consideration. There are also some incompatible office issues that would not work, procedurally.

Mayor Pro Tempore Grzan inquired as to what would happen in the event a commissioner resigns, or was unable to fulfill a term, and the Council found a qualified applicant to fill the vacancy. Would staff bring the individual before the Council for interview and appointment?

Council Services & Records Manager Torrez informed the Council that the City would have to post a notice of vacancy. Once a qualified candidate(s) steps forward, the individual(s) would be asked to interview before the Council for consideration and appointment.

Mayor Pro Tempore Grzan inquired whether all terms can expire at the same time/month of the year.

Council Services & Records Manager Torrez indicated that the Council was asked whether it would like to coincide all terms to occur at the same time/month. However, some Council members felt that it would result in a long interview process. She noted that the Council has grouped terms of similar boards and commission to give the Council flexibility in appointing individuals to an alternate commission, if not appointed to the board/commission of choice.

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Regarding residency requirements, Mayor Kennedy and Council Member Tate indicated that they would consider the appointment of a non registered voter.

Interim City Attorney Siegel indicated that an interim appointment would take some additional language and definitions regarding timing, etc. He said that historically, you find that when an individual is appointed to fill a short term vacancy, their reappointment is a foregone conclusion. He indicated that this would not add a tremendous burden to staff or the Council to make an interim appointment. He clarified that there is no obligation to fill the vacancy if the vacancy is close to its expiration; unless there is a problem with meeting a quorum and someone is needed immediately to make a quorum.

Mayor Kennedy indicated that he met with the co-chair of the Senior Advisory Committee and that he would like to meet with the other co-chair as well. He stated that there is a question whether the Council needs to make new appointments; noting that the Parks & Recreation Commission has made appointments without interviews. He said that this is a concern to the chairs of this Committee. He stated that he would like to meet with the chair further; bringing this issue back to the Council for further discussion as the Council may wish to take action.

Council Member Tate felt the Council needs to interview individuals to fill positions on the Senior Advisory Commission.

Council Member Sellers noted that some of the Senior Advisory Committee members have terms expiring in August. The question becomes whether the Council wants to interview all individuals in August or conduct interviews earlier. Should the Council decide to move up the interview process, he suggested that this be done on a one time basis (e.g., February).

Interim City Attorney Siegel clarified that before the Council can conduct interviews, the City has to have positions to apply for. The Council will need to use its power to remove committee members in order to be able to recruit, interview and appoint. The Council could state that there are no commissioners to the Senior Advisory Commission as this Commission has not existed. The Council would need to make this finding before conducting interviews. Should the Council decide to wait for terms to expire in August, the incumbents would be included in the pool of individuals to interview.

City Manager Tewes noted that the Council has announced its intention to create a new commission that will report directly to the Council. One option would be to transition the existing Senior Advisory Committee and have this Committee become the Senior Advisory Commission. Another option is to state that the Council will be making seven appointments to the Commission.

Council Member Carr stated that he was not sure that when the Senior Advisory Committee requested that they report directly to the Council that there was any indication that they would not be the Senior Advisory Commission. He noted that the current Senior Advisory Committee members were duly appointed with the process in place. Would this group rethink their request if the Council was to state that the Senior Advisory Commission would report directly to the Council, however, it would not be the current Senior Advisory Committee members? He stated that he did not support having the Senior Advisory Committee report directly to the Council with the idea that they would be unseated and then

become reappointing members. He felt the City would be creating a bigger issue than exists; noting that the Council could interview the Commission members as terms expire.

Council Member Grzan stated his concurrence with the comments as expressed by Council Member Carr.

Mayor Kennedy suggested that he be allowed to meet with staff and the Senior Advisory Committee chairperson. This item would return to the Council at a future meeting as it was his belief that there were some unanswered questions that need to be answered before making a decision (e.g., 1) citizen status issue; 2) residency requirement; and 3) interim appointments by the mayor to fill vacancies until the interview process can occur). He stated his support of the other staff recommended ordinance amendments.

Council Member Tate noted that the majority of the boards and commissions were not supportive of four year terms. However, he noted that a majority of the PRC members support 4-year terms, and that he would support extending this commission's term from two to four years. He would support retaining the two year term for ARB members in order to be able to recruit members to this board.

Council Member Carr noted that the Library, Culture & Arts Commission requested that the operations of the library be within their purview. He stated that he did not object to their review of library operations as it is a good idea. However, the Commission needs to understand that neither the City nor the Council oversees the operations of the library. He would like to hear their thoughts on this so that the Council can help direct the City's Library Joint Powers Authority member to have a unified voice on matters.

Council Member Sellers concurred with Council Member Tate's suggestion about the four year term. He did not support the suggestion of having Council members fill in or sit in on board or commission meetings. He noted that Council Members have busy schedules. He recommended that the application/questionnaire or in the interview process stipulate that if appointed, it is a commitment that requires attendance at board or commission meetings.

Mayor Pro Tempore Grzan inquired whether the Council has any provisions for removing a board or commission for failing to attend meetings.

Interim City Attorney Siegel informed the Council that it can remove a commission member for any reason. Should the Council decide to implement guidelines, the Council may tie its hands.

Council Member Carr indicated that it was his recollection that the Council had a policy or ordinance in place that stipulates that if a commission or board member missed three meetings within a calendar year they would be removed from the board or commission. It was also his recollection that the Council appointed alternates to a commission based on the concern about attendance and the lack of a quorum. The Council gave the alternates the ability to sit as a member to the commission to make a quorum.

City Manager Tewes referred to Section 2.22.050 – Rules of Attendance of the Master Provisions for Boards and Commission as contained in the Morgan Hill Municipal Code. The Code states that "If any



member is absent from three of any six consecutive regular board or commission meetings, unless such absence is with the permission of the chair, or vice chair in the absence of the chair, expressed in the official minutes, the member's seat shall be deemed vacated. The city manager shall so notify the city council and the council shall take action to fill the seat within a reasonable period of time."

Mayor Kennedy and Council Member Tate stated that the non registered voter candidate is an outstanding candidate. Mayor Kennedy further stated that this candidate would be an excellent candidate to appoint to serve on the Library, Culture & Arts Commission.

City Manager Tewes indicated that the appointment of a non registered voter would be an instance where it would be necessary to amend the Municipal Code as the Master Provisions for Boards and Commission states that "...unless otherwise set forth, all members of boards and commission shall be residents of and registered voters in the City..."

Mayor Kennedy noted that there is an exception to the residency requirements for the Library, Culture & Arts Commission.

Mayor Pro Tempore Grzan indicated that as qualified as the applicant may be, he was not willing to modify the code for a single occurrence, unless the Council is willing to amend the code for all boards and commission.

Council Services & Records Manager Torrez informed the Council that the City received a call from an individual interested in serving on the ARB who was not a U.S. citizen in the past. The applicant did not qualify for appointment based on the requirements as stipulated in the Municipal Code. She did not bring this application to the Council for consideration as the City was not reviewing ordinance changes. As the Council is reviewing draft ordinance amendments, this would be the opportune time for the Council to consider residency requirements.

Mayor Kennedy suggested the Council consider latitude language for the appointment of non U.S. citizens, should an exceptional candidate step forward.

Interim City Attorney Siegel indicated that staff would need to research to determine whether the Council can appoint a non U.S. citizen. Should the Council support appointing a non U.S. citizen, the Council would be provided ordinance with language for consideration. When the Council sees the next version of ordinance text amendments, the amendments would include corrections to items not previously caught that are contained in the Municipal Code, items that are repeated that should not be repeated, and items that should be repeated that are not repeated. Therefore, the Council will see a number of corrections in the next version of proposed text amendments. These items have not been brought before the Council because they are of non substantive clean up items. Staff is working toward correcting the substance of the ordinance. Once staff knows the substance of the ordinance, staff can clean up the code; making this section of the municipal code shorter and readable.

**Action:** *By consensus, the Council provided the above comments; requesting that staff return with answers to the following: 1) non citizen appointments; 2) residency requirement; and 3) interim appointments by the mayor to fill vacancies until the interview process can occur*

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*prior to returning with an Ordinance, Incorporating proposed Amendments to the Municipal Code as they relate to Council Appointed Boards and Commissions.*

**21. REVIEW OF CITY COUNCIL COMMITTEES AND APPOINTMENTS TO OUTSIDE AGENCIES**

Mayor Kennedy informed the Council that the reason this item is before the Council instead of after the Council's annual retreat is because the Valley Transportation Authority (VTA) needs to have an indication from the Council as to who will be the City's VTA Board representative. He recommended that rather than acting on all of the appointments this evening, that appointments be delayed until after the Council's goal setting retreat. However, he recommended that the Council address the VTA appointment this evening.

Council Services & Records Manager Torrez informed the Council that on the Dais, the Council has been provided a supplemental handout that lists Council Member Sellers as serving as the primary member to the South County Roadway Policy Advisory Board. She indicated that the Council is being asked to make an appointment to the VTA Board as it is the City of Morgan Hill's rotation to serve on the Board. She informed the Council that the VTA Board will be administering the Oath of Office in early January. Therefore, the VTA Board appointment cannot wait after the Council's goal setting session.

Mayor Pro Tempore Grzan stated his concurrence with Mayor Kennedy's recommendation.

Council Member Carr expressed concern with the recommendation. He stated that he has a strong interest in trying to align Council assignments; including outside appointments. He recommended that the Council strengthen and focus on this, rather than randomly selecting assignments that may be of interest, individually. He noted that the Council put into place a standing Council committee process this past year that will be reviewed at the January retreat. He felt that this was the foundation to which the Council should be considering in the rest of its appointments. While he understands the timeline for the VTA Board appointment, he recommended that appointment be considered for an interim time period until such time that the Council figures out what it will do with the Committee assignments. He noted that the VTA Board appointment will be a two-year term and would be a longer implication than just looking at next year's rotation of assignments. He recommended that the Council take a look at how it will run municipal government in Morgan Hill. He noted that the Council started a committee process for one year, and felt that the Council needs to spend more time on this as all appointments are important when it comes to these committees.

Council Member Sellers supported an interim VTA Board appointment as he has issues that need to be addressed and would like to have the opportunity to address these at the Council's workshop. He recommended that VTA be notified that this would be an interim appointment for this month as the Council will be making a permanent appointment following the Council's retreat.

**Action:** *Council Member Carr made a motion, seconded by Council Member Sellers, to make an interim appointment to the VTA Board until such time the Council has its discussion and makes the committee assignments. The motion carried unanimously (5-0).*

Mayor Kennedy requested that each Council member provide its preferred assignments; returning at a subsequent meeting for discussion.

Council Member Tate agreed with Council Member Carr that appointments need to be tied to the discussion the Council will have on the Council committees and how they will work following the Council workshop. Assignments can be made at the workshop, following discussion, or at a subsequent Council meeting.

Mayor Kennedy indicated that he would appoint himself as an interim appointee to the VTA Board of Directors, subject to Council ratification.

Council Member Carr indicated that one of the discussion points the Council will have with this position, as well as others, is the way the Council reports back on all of the committees. He noted that the VTA has been in the press quite a bit and that they will be making significant decisions over the next year that will affect all residents, transportation users, and taxpayers. He would like to make sure the Council is a part of the decision making process in the correct way. He would like to have a discussion on whether Council appointees are making decisions on their own or whether decisions are a representation of the Council's direction, especially with the significance on what will be coming before the VTA Board next year. He would like to make sure the Council is unified in the positions be taken in having this Board seat. With this understanding, he would support having Mayor Kennedy serve on the VTA Board, on an interim basis. He would like to have a commitment that the Council will receive communications on the items that are upcoming and the decisions being made. He felt the Council needs to discuss how council members are to report back to the entire council at the retreat.

Mayor Kennedy indicated that there has been a lot of controversy and discussion regarding the VTA and the various positions. He said that the Regional Planning Transportation Committee met to discuss the City's position on BART, VTA, South County issues, etc., and developed a position. It was his belief that the Committee's position was brought back to the Council. He informed the Council that the City of San Jose submitted to VTA staff a plan that was delivered to the VTA Board Members two days before the Board meeting. He was told the night before the meeting that the City's voting representative, City of Milpitas Council Member Livengood, would not be in attendance at the meeting and was asked if he could attend the meeting. A question came up at the VTA Board as to whether it made sense to take action on a multi billion dollar expenditure that was just seen two days before the meeting. He stated that Santa Clara County Board of Supervisor Don Gage moved to delay action in order to review the proposal. He indicated that he supported the motion as there were six members who were going to vote to delay the decision. He said that the initial motion, as stated by Mayor Gonzales, would have failed on a 6-6 vote. However, the motion did not go to vote. Supervisor Gage's motion to delay the vote passed. He informed the Council that information and decisions move quickly.

**Motion:**        *On a motion by Council Member Carr and seconded by Mayor Pro Tempore Grzan, the City Council unanimously (5-0) **Appointed** Mayor Kennedy to the VTA Board on interim basis.*

### **RECONVENE TO CLOSED SESSION**

Mayor/Chairman Kennedy adjourned the meeting to Closed Session at 9:43 p.m.

### **RECONVENE**

Mayor/Chairman Kennedy reconvened the meeting at 9:57 p.m.

### **CLOSED SESSION ANNOUNCEMENT**

Interim City Attorney/Agency Counsel Siegel announced that there was reportable action for an item listed on the agenda as anticipated litigation. The Interim City Attorney reported that the City Council authorized him to attempt to reinstate the loan for the BMR unit located at 397 Calle Atavio. The City Council further authorized the City Attorney, City Manager and Building Assistance and Housing Services staff to thereafter attempt to purchase the BMR unit so that the unit at 397 Calle Atavio would remain in the City's BMR Program.

### **FUTURE COUNCIL-INITIATED AGENDA ITEMS**

No items were identified.

### **ADJOURNMENT**

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 9:59 p.m.

### **MINUTES RECORDED AND PREPARED BY:**

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**IRMA TORREZ, CITY CLERK/AGENCY SECRETARY**